

UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF PUERTO RICO

JUAN R. ORTIZ GONZALEZ,

Plaintiff

v.

Civ. No. 97-2309 (PG)

FONOVISA, DISTRIBUIDORA NACIONAL DE
DISCOS, DISTRIBUIDORA APONTE, INC.

A, B, AND C COMPANIES, JOHN DOE, ETC.,

Defendants

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U.S. DISTRICT COURT
SAN JUAN, P.R.

OPINION & ORDER

Plaintiff Juan R. Ortiz González requested this Court award him costs and attorney's fees. (Dkt. 56) Defendant Distribuidora Nacional de Discos opposed any award of costs or attorney's fees. (Dkt. 60)

After being awarded \$16,256.79 in damages by the Court, Plaintiff now asks the Court to award him \$11,274.45 in costs and attorney's fees. Section 505 of the Copyright Act of 1976 leaves the award up to the discretion of the Court. *See* 17 U.S.C. § 505.

§ 505. Remedies for infringement: Costs and attorney's fees.

In any action under this title, the court in its discretion may allow the recovery of full costs by or against any party other than the United States or an officer thereof. Except as otherwise provided by this title, the court may also award a reasonable attorney's fee to the prevailing party as part of the costs.

Id.

After considering the background and equities of this case, the Court declines to award costs and attorney's fees to Plaintiff. Plaintiff won on default, not on the merits. While neither side disputes

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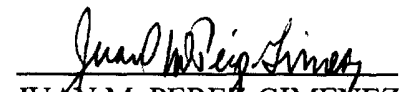
97-2309 (PG)

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that Plaintiff is a “prevailing party,” the fact that Plaintiff won through default and not on the merits shapes the Court’s decision. The history of this case also directs the Court to deny this award. Plaintiff voluntarily dismissed its case against one defendant after a days worth of trial in order to pursue its case against the other defendants, who were in default. “The difficulty in life is the choice.” George Moore (1855), “The Bending of the Bough,” Act iv. Plaintiff must live with its choice.

IT IS SO ORDERED.

San Juan, Puerto Rico, December 1, 2000.


JUAN M. PEREZ-GIMENEZ
U.S. District Judge